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ABSTRACT

The United States Supreme Court decided two cases in the area of school finance in 1986. It addressed student financial assistance under a vocational rehabilitation program for tuition at a sectarian postsecondary institution in Washington; it also decided a case challenging a state finance program. Cases were heard by other courts in an attempt to follow recent U.S. Supreme Court cases in areas of public school personnel working in parochial schools and the recovery of improperly spent federal funds. Some cases represent attempts by state legislatures to implement, and by courts to interpret, taxpayer revolt legislation and other efforts to curb the growth of government spending. Several challenges to the use of funds for programs for handicapped children were presented to the Department of Education. And there was continued litigation on the taxing and spending authority of school districts. These cases, discussed in this chapter, fall under three major topics: public funds for private schools, sources and allocations of public funds, and school tax issues. (TE)

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FINANCE

Julie Underwood

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INTRODUCTION

The United States Supreme Court decided two cases in the area c school finance in 1986. It addressed student financial assistance under vocational rehabilitation program for tuition at a sectarian post second ary institution in Washington; it also decided a case challenging a stat finance program. Cases were heard by other courts in an attempt t follow recent United States Supreme Court cases in the areas of publi school personnel working in parochial schools, and the recovery o improperly spent federal funds. Some cases represent attempts by stat legislatures to implement, and by courts to interpret, taxpayer revo legislation and other creative efforts to curb the growth of governmer spending. Several challenges to the use of funds for programs for hand capped children were presented to the Department of Education. An

as always, there was continued litigation on the taxing and spending authority of school districts.

PUBLIC FUNDS FOR PRIVATE SCHOOLS

Numerous cases that dealt with public funding for private schools were heard this year. These cases involved establishment of religion claims. One case involved a district's attempts at compliance with *Aguilar v. Felton*[1] and *Grand Rapids School District v. Ball*,[2] both decided by the United States Supreme Court in 1985. The second case involved a school district allowing religious education classes to take place in the elementary schools immediately before and after school. While another case involved the placement of public university student teachers at private sectarian schools. The issue of the constitutionality of the South Dakota textbook loan program was decided. The Supreme Court addressed student financial assistance under a vocational rehabilitation program for tuition at a sectarian postsecondary institution in Washington, and the Fourth Circuit Court of Appeals reviewed a similar program in Virginia.

Each of these cases deals with a claim that the program or practice constitutes an establishment of religion in violation of the first amendment. The establishment clause provides that "Congress shall make no law respecting an establishment of religion."[3] The courts currently interpret this using the three prong analysis established in *Lemon v. Kurtzman*.[4] First, the program or practice must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, it must not foster an excessive government entanglement with religion.[5]

Use of Facilities

In 1985, the United States Supreme Court in *Aguilar v. Felton*,[6] found that using federal funds to send public school teachers and other professionals into religious schools for chapter 1 instruction violated the first amendment.[7] In an effort to implement the *Aguilar* decision, the Community School District 14 in Brooklyn adopted a plan to conduct chapter 1 classes for private school students in the public school facilities

1. 105 S. Ct. 3232 (1985); *see* The Yearbook of School Law 1986 at 198.
2. 105 S. Ct. 3216; *see* The Yearbook of School Law 1986 at 196.
3. U.S. Const. 1st Amend.
4. 403 U.S. 602 (1971).
5. *Id.* at 612-13.
6. 105 S. Ct. 3232 (1985); *see* The Yearbook of School Law 1986 at 198.
7. Lemon v. Kurtzman, 105 S. Ct. at 3236.

rather than sending public school teachers to the private school as had been their practice. Within this school district's attendance area is Beth Rachel, a private elementary school for girls affiliated with the Satmar Hasidic Jewish sect. The Hasidic faith enforces strict separation of the sexes, even in educational settings, and stresses separation from the mainstream of society. In an effort to accommodate these religious beliefs, the district's plan for providing services included separate classes for the Beth Rachel students within the public school. The classrooms were physically separated from the rest of the classrooms by doors constructed in the hallways. Only the girls from Beth Rachel received instruction in these rooms. The school provided separate instructors who were female and spoke Yiddish. The parents' association challenged the plan claiming a violation of the establishment clause.

Using the *Lemon v. Kurtzman* analysis, the court found that the lengths to which the city went in accommodating the religious views were likely to be perceived as governmental support for the separatist tenets of the Hasidic faith.[8] Thus, to impressionable young minds it may appear that the school was endorsing not only separatism, but the derogatory rationale for separation expressed by some of the Hasidim. Thus, the plan had the primary effect of advancing religion, in that it gave the appearance of favoring Hasidism.[9] The court of appeals, therefore, reversed the district court's refusal to issue an injunction against the implementation of the plan.

In 1979, the Findlay Board of Education approved the rental of the elementary school buildings, either before or after school hours, to the Findlay Weekday Religious Council for $1. Religious classes were held by the group on a daily basis, but could not start any sooner than five minutes after dismissal and had to end no later than five minutes before classes began. In addition, some of the elementary school Parent Teacher Organizations had made direct contributions to the religious group organizing the classes. After August 1984, the schools no longer distributed information about the program in classes, nor did they collect registration forms, contribution envelopes, or permission slips as their previous practice had been. Plaintiff taxpayers contended that, even after the schools' involvement had been limited, the practice of allowing the classes to take place in the building immediately before and after school violated the first amendment. More specifically, they claimed that (1) the program gave the perception of endorsement of religious instruction by the schools, (2) the compulsory attendance machinery provided students for religious instruction, (3) the financial contribu-

8. Parents' Ass'n of P.S. 16 v. Quinones, 803 F.2d 1235 (2d Cir. 1986).
9. 803 F.2d at 1241.

tions of the Parent Teacher Organizations advanced religion, and (4) the program constituted an entanglement of religion because school personnel were required to be on school premises during the times that religious instruction took place. A federal district court upheld all but one of the plaintiff's contentions.[10] The court noted that the practice of allowing religious instruction in the elementary schools immediately before and after school, because of the location, the timing, and the age of the children gave the appearance of endorsement of religious practices to impressionable young children.[11] Citing recent Supreme Court decisions, the court determined that this constituted a violation of the establishment clause. The court was not persuaded that the district's policy of allowing other groups to meet in the schools necessitated allowing the religious classes to meet. The court held that the school was not a public forum in the traditional sense, and that the school could still allow religious groups to meet at the school but not immediately before and after classes. The court, however, did not find that the contributions from the Parent Teacher Organizations were unconstitutional, noting only their size and the fact that not every state action which in some way benefits religious activities violates the establishment clause.[12]

St. Cloud University, a university under the control of the Minnesota State University Board, adopted a policy which permitted students to fulfill their student teaching requirements at parochial schools if such schools met the criteria required of public schools. The university paid the participating parochial school for each student teacher and placed no limits on the participating school's use of the money. The university provided a supervisor who would make periodic on-site observations and evaluations of progress. Students were allowed to select the parochial placement, but were advised that "the student's participation in any religious aspect of the school is exclusively between the parochial school's personnel and the student teacher."[13] Three students were in parochial school placements when the practice was challenged on establishment of religion grounds. The Eighth Circuit Court of Appeals applied the traditional *Lemon v. Kurtzman* analysis and found that the policy violated the establishment clause, given that the practice's primary effect would benefit parochial schools. The policy provided a benefit to parochial schools in the form of funds with no strings attached and an opportunity to evaluate student teachers for future employment. In addition, as was true in *Grand Rapids School District v. Ball*,[14] the

10. Ford v. Manuel, 629 F. Supp. 771 (N.D. Ohio 1985).
11. *Id.* at 779.
12. *Id.*
13. Stark v. St. Cloud State Univ., 802 F.2d 1046, 1047 (8th Cir. 1986).
14. 105 S. Ct. 3232 (1985); *see* The Yearbook of School Law at 198.

practice communicated a message of governmental endorsement of pervasively sectarian parochial schools and created the perception of a symbolic union between church and state in the minds of parochial school students. This perception of a union between church and state was given great weight by the court, especially since it was in view of the children.

Auxiliary Services, Textbooks, and Instructional Materials

The issue of the constitutionality of the South Dakota textbook loan statute was finally resolved in a federal district court case and a South Dakota Supreme Court case. The federal district court had earlier found that the statutes did not, on their face, violate the establishment clause.[15] The constitutionality of the statutes, however, still remained in question under the South Dakota Constitution. On certification of the issue to the South Dakota Supreme Court, the loan provisions were found to be in violation of the state constitution which provides that "[n]o appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state" (article VII, section 16), and "[n]o money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution." (article VI, section 3).[16] The court reiterated the right of the state to provide more restrictive requirements on the use of public funds to private sectarian institutions than are provided in the United States Constitution, and found the statute unconstitutional under the more restrictive state constitution even though the texts were provided to all children within the district.

Student Aid

A blind student who was pursuing a Bible studies degree at a Christian college was denied financial aid under a state vocational rehabilitation assistance program. The Washington Supreme Court held that the first amendment precluded aid to a student pursuing a program which would prepare him to be a minister.[17] In a unanimous opinion, the United States Supreme Court reversed the Washington Supreme Court's decision.[18] Once again the *Lemon v. Kurtzman* three prong analysis was applied. The Court found the purpose of the program (i.e., to assist the visually handicapped through the provision of vocational rehabilitation

15. Elbe v. Yankton Indep. School Dist. No. 63-3, 640 F. Supp. 1234 (D.S.D. 1986).
16. *In re* Certification of a Question of Law, 372 N.W.2d 113 (S.D. 1985).
17. Witters v. Commission for the Blind, 689 P.2d 53 (Wash. 1984).
18. Witters v. Washington Dep't of Servs. for the Blind, 106 S. Ct. 748 (1986).

services) to be secular. The last two prongs of the analysis were dealt with together as the court looked at whether the financial assistance would be an "impermissible direct subsidy" to the sectarian institution. Since the funds went directly to the student, not to the institution, the decision to support religious education was made by the individual, not by the state. Thus, it did not violate the primary effect and entanglement prongs of the *Lemon v. Kurtzman* analysis. In sum, the Court held

> it does not seem appropriate to view any aid ultimately flowing to the Inland Empire School of the Bible as resulting from a *state* action sponsoring or subsidizing religion. Nor does the mere circumstance that petitioner has chosen to use neutrally available state aid to help pay for his religious education confer any message of state endorsement of religion.[19]

A similar case was heard by the Fourth Circuit Court of Appeals.[20] A handicapped student wished to pursue a degree at a church-affiliated college outside the state of Virginia. While that state provides financial assistance to handicapped residents attending any college, the Attorney General had issued a formal opinion that the state constitution prohibited payment of state funds to church-affiliated colleges located outside the state. Accordingly, Phan's application for financial assistance was rejected. He sought individual relief alleging the in-state, out-of-state distinction was unreasonable. The federal district court dismissed his complaint and the Fourth Circuit Court of Appeals, in an opinion after *Witters*, vacated the dismissal. The state's justification for the differential treatment was based on the need to monitor the nature of religious affiliation. It was noted that the Virginia Constitution imposes a stricter interpretation on the prohibition of establishment of religion than does the United States Constitution. Thus, the court determined that the state did have a need to monitor the nature of the institution the student was attending. If it were more difficult to monitor out-of-state students than in-state students the court of appeals agreed that the distinction would stand. However, the record was incomplete as to the degree of monitoring of church-related schools the state maintained. Therefore, the case was remanded for further evidentiary findings.

Transportation

The only case reviewed in this section which does not contain an establishment of religion claim dealt with the interpretation of a Rhode

19. *Id* at 752-53.
20. Phan v. Virginia, 806 F.2d 516 (4th Cir. 1986).

Island statute mandating local districts to pay for transportation for public and private school students. The statute in question provides in part, "[t]his chapter shall be construed . . . to create a state plan . . . to afford bus transportation to pupils who attend non-public non-profit schools which are consolidated, regionalized or otherwise established to serve residents of a specific area within the state."[21] The state was divided into five transportation regions and a district was required to provide transportation for students to schools which were also contained within its transportation region. Harnois petitioned Cumberland to provide bus transportation for her child to and from Mount St. Charles Academy. Cumberland refused, contending that the school did not fulfill the requirements of the statute because it was not a regional school, services were provided to more than one of the transportation regions, and out-of-state students were accepted. The court upheld the Commissioner of Education's interpretation of the statute, finding it irrelevant whether services were provided to students who lived in more than one transportation region or even out of state.[22] The court found that the school's newly amended articles of association showed that it was a "nonpublic, nonprofit school established to serve residents of a specific area within the state,"[23] in accordance with the statute. Thus, the school was found to be responsible for the student's transportation under the statute.

SOURCES AND ALLOCATIONS OF PUBLIC SCHOOL FUNDS

State School Finance Programs

Although the number of cases challenging state school finance systems has declined over recent years, it is still a significant field for judicial action in education law. This year the United States Supreme Court heard the first state finance program challenge since *San Antonio Independent School District v. Rodriguez*.[24] In addition, in California a third generation school finance case was decided;[25] a New York case challenged the use of voluntary taxpayer information in determining levels of state funding; the Massachusetts courts are continuing to deal with changes in state finance dictated by Proposition 2½; the Supreme Court of Michigan was asked to interpret taxpayer revolt legislation as it affects the Michigan school finance formulae; and an Idaho case dealt

21. Gen. Laws 1956, § 16-21.1-1.
22. Cumberland School Comm. v. Harnois, 499 A.2d 752 (R.I. 1985).
23. *Id.* at 754.
24. 411 U.S. 1 (1973).
25. Serrano v. Priest, 226 Cal. Rptr. 584 (Dist. Ct. App. 1986).

with the proper use of school land funds.

In 1985, the Fifth Circuit Court of Appeals determined that an action brought by local school boards against the state was barred by the eleventh amendment.[26] The court decided that the dismissal of the complaint was proper since the differential funding was not unconstitutional under *San Antonio Independent School District v. Rodriguez*.[27] The granting of the writ of certiorari from this decision presented the United States Supreme Court with the opportunity to review a state's school finance program for the first time since *Rodriguez*. In *Papasan v. Allain*,[28] the plaintiffs argued that they received far less money per pupil than did other districts in the state. The argument, however, involved a rather complicated set of facts.

The school land grants in Mississippi in the early nineteenth century followed the pattern established by the federal government in the Land Ordinance of 1785. Section sixteen (and later, section thirty two) of each township was reserved to the states for public schools. In addition, Congress indemnified states for the school land sections which might be missing by allowing them to select lands to serve in lieu of the designated but unavailable lands. The lands on which the plaintiffs resided were not subject to the federal laws providing for the creation of the Mississippi Territory and for the sale and survey of its land because they were held at that time by the Chickasaw Indian Nation. Consequently, when these Indian lands were ceded to the United States in 1832, no section sixteen lands were reserved from the sale. To remedy this in 1836, Congress provided that property in lieu of section sixteen lands in the cession would be reserved for schools. In 1856, the state legislature sold these lands and invested the proceeds in loans to the state railroads. The state's investment was lost when the railroads were destroyed during the Civil War, and the investment principal was never replaced.

Under Mississippi law, all funds from section sixteen and lieu lands were allocated directly to the specific township to which those lands applied. In the counties created from the Chickasaw Cession, the state legislature paid the districts directly in the approximate amount of the original interest paid on the lieu land investment. In 1981, this amounted to an annual sum of $61,191 or $.63 per pupil; whereas, the average school land income in the rest of the state was about $75.34 per pupil. The controversy arose over the disparate funding level between those districts with regular school land income and those districts created from the Chickasaw Cession.

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26. Papasan v. United States, 756 F.2d 1087 (5th Cir. 1985).
27. 411 U.S. 1 (1973).
28. 106 S. Ct. 2932 (1986).

In 1981, the school districts created from the Chickasaw Cession, and children within them, challenged the funding disparity by filing suit in the federal district court. Among their allegations was the argument that the disparities in the level of financial support between their school districts and the school districts with regular school land income, deprived the children in the former districts of a minimally adequate level of education and the equal protection of laws. The district court dismissed the complaints, and held that they were barred by the applicable statute of limitations and by the eleventh amendment. The Fifth Circuit Court of Appeals affirmed. Although it found the plaintiffs' equal protection claim would not be barred by the eleventh amendment, the dismissal of the complaint was found to be appropriate because the disparate funding was not unconstitutional under *Rodriguez*. The Supreme Court accepted certiorari and affirmed the court of appeals decision regarding the eleventh amendment immunity decision, but reversed on the equal protection issue and remanded the case for further factual findings on that issue.

For its analysis, the Court focused on the disparities in the land grant benefits as opposed to the broader questions of whether a minimally adequate education was a fundamental right and whether that alleged right had been violated. The Court noted that although the constitutional rights issues concerned remained unsettled, they did not require a resolution in the case.

According to the Court, *Rodriguez* dictated the appropriate standard of review for the equal protection claim, the rational relationship test. Under this level of scrutiny a state's action will be found constitutional if it bears a rational relationship to a legitimate state interest. Once this test was applied in the present case, the Court found that the plaintiffs may be able to substantiate their claim. Here the claim did not involve a challenge to the overall system of state school finance as in *Rodriguez*, but rather was limited to the disparities between the districts which had regular school land funds and those that did not. Furthermore, in *Rodriguez* the funding disparities arose from local decision regarding funds derived from local property taxes, while in *Papasan* the disparities arose directly from the state's decision involving the level of compensation for the lost principal to the Chickasaw Cession districts. Recognizing these differences, the Court concluded that the precedent set in *Rodriguez* did not necessarily resolve the equal protection issue in favor of the state in this case. It instead decided that the alleged facts provided a sufficient basis on which the plaintiffs could state a cause of action under an equal protection theory.

In summary, in the equal protection portion of *Papasan* the Supreme Court narrowed the ruling in *Rodriguez*. It stated that *Rodriguez* did not "purport to validate all funding variations that might result from a state's

public school funding decision." Funding disparities may constitute an equal protection violation when it can be shown that they are not rationally related to a legitimate state interest. The Court could not pursue that issue further, because the district court had dismissed the claims without making the necessary factual determinations. Thus, the case was remanded for further proceedings on that point.

A third generation of a California school finance case may provide the beginning of one of the last chapters for the earlier wave of school finance litigation. This case predominantly presented compliance issues: what will be acceptable state responses to a court's determination that state school spending must be equalized? The issue to be decided was whether the school finance system was in compliance with the court mandated requirement that "wealth-related disparities in per pupil expenditures be reduced to insignificant differences."[29]

In the earlier case, the California Supreme Court found that the funding disparities between rich and poor districts violated the California Constitution.[30] The remedy decreed by the court was a reduction in the funding disparities between the districts to insignificant levels. More specifically that they be reduced to a $100 range. The basic question was whether for purposes of determining if compliance had been achieved, the court should focus on the phrase "insignificant differences" or on the $100 figure. The court determined that the proper compliance standard was whether the legislature had done all that was reasonably feasible to comply in reducing funding disparities to insignificant levels. Using this standard, the court concluded that California not only had met the standard, but had surpassed it.

Secondarily, the court was asked to again review the state finance system to determine if it violated the California Constitution. The court had to determine what unit of measure to use in determining fiscal equity. Based on the testimony of expert witnesses, the court determined the base revenue limit per pupil was the appropriate unit of measure. In selecting the base revenue limit per pupil in average daily attendance, the court excluded categorical aid and special need programs. The court noted that those are not wealth-related. In addition, they serve substantial and, indeed, compelling state ends in an appropriate, rational, and legitimate fashion.

In regard to the equity measure, the court noted that "no single measure of disparity permits accurate and comprehensive conclusions to be drawn about the equity of California's school finance system."[31] As

29. Serrano v. Priest III, 226 Cal. Rptr. 584, 601 (Dist. Ct. App. 1986).
30. Serrano v. Priest II, 96 Cal. Rptr. 601 (Cal. 1971).
31. Id. at 611.

such, the court accepted a number of measures of equity and heard testimony from a number of expert witnesses.

In determining whether the current California system of school funding was in violation of the equal protection provision of the California Constitution, the court had to again adopt the proper standard for review. It reasoned that even though education might be considered a fundamental interest, not every statute that touches upon it should be subject to strict scrutiny nor should the legislature be required to justify every educational classification with a necessary and compelling state interest.[32] The court concluded that the standard of review for equal protection cases involving education is whether the funding disparities challenged by the plaintiffs bear a rational relationship to a "realistically conceivable legislative purpose." Applying this standard to the equity measures in evidence the court found the current pattern of funding the California public schools did not violate the state's equal protection provision, and noted that since the last litigation it had, in fact, "improved dramatically."

In a case from New York, taxpayers challenged the use of voluntary taxpayer information in determining the level of state funding for local districts.[33] In a series of legislative enactments between 1977 and 1982, the New York legislature developed a system whereby a major factor in the state appropriation formula for the local school districts was the gross income of the residents of each school district. State allocations to districts, to a great extent, were inversely proportional to the wealth of the resident taxpayers. To collect the income data, the State Tax Commission adopted regulations requiring taxpayers, by reference to a school district code number, to identify their resident district on their state income tax returns. Because of a confidentiality requirement contained in the tax code,[34] these data could not be independently verified. Thus, the resident school district given by the taxpayer was taken as accurate; if not provided, the data were not used. Because of taxpayer confusion or a deliberate attempt to thwart the system by the taxpayers, there were data relating to plaintiff district which were blatantly inaccurate. Taxpayers and the school district brought this action seeking a declaration that the practice was unconstitutional and contrary to statute in that it provided for formulae in calculation of state aid to school districts predicated upon inaccurate data. The New York Supreme Court, Suffolk County found that the legislature had the authority to calculate state school aid through a formula based on resident taxpayers' wealth, and

32. Id. at 606.
33. Dumain v. Carey, 499 N.Y.S.2d 334 (App. Div. 1986).
34. N.Y. Tax Law § 697(e).

that it could delegate the task of data collection to an administrative agency. However, it determined that the administrative agency failed to develop a system which was reasonably calculated to effectuate the purpose of the statute. As such, the practice was found to be contrary to the enacting legislation and therefore invalid. The court further upheld the plaintiff school districts' petition for retroactive application of a remedial statute which would provide accurate data for previous years. In sum, the court ordered the state to provide adjustments of all disbursements made for the school years 1980-81 through 1984-85 to the extent that they were based on any formula using invalid data gathering techniques.

Proposition 2½ passed the Massachusetts legislature in 1980 and provided that any provision of law taking effect after January 1, 1981 which imposed direct services or costs on a city or town would be invalid unless during the same legislative session an appropriation from the state was provided for that cost.[35] In Massachusetts, funding for pupil transportation is provided through the state on a reimbursement basis, thus expenses incurred during one fiscal year are reimbursed in the next. In 1983, the legislature enacted a provision which extended the transportation obligations of cities and towns for transportation of private school students.[36] The Supreme Judicial Court of Massachusetts held that this was invalid under Proposition 2½ because funding was not provided in the same session for the direct obligation imposed on cities and towns.[37] In response in 1985, the legislature enacted a provision which appropriated over $55 million for reimbursement to cities and towns for expenditures for transportation of pupils pursuant to 1983 legislation.[38] The legislature further provided that any city or town which did not accept the provision of the 1983 legislation increasing the obligation for transportation of private school students, was ineligible for *any* reimbursement of *any* pupil transportation costs for 1986. The acceptance of this condition imposed additional financial obligations on the local districts since they would then have to comply with the increased services mandated by the 1983 legislation. Plaintiff Lexington estimated that compliance would cost an additional $55,000 for the 1985-86 school year; however, choosing not to comply would cost the district in excess of $200,000 for the same time period. This legislation was challenged as invalid under Proposition 2½ as providing additional financial obligations without concomitant financial support. The Su-

35. Mass. Gen. Laws ch. 29 § 27 (C).
36. 1983 Mass. Acts 663.
37. Lexington v. Commission of Educ., 473 N.E.2d 673 (Mass. 1985).
38. 1985 Mass. Acts 140 (line item 7035-0004).

preme Judicial Court of Massachusetts held that the receipt of reimbursement by cities or towns conditioned on their acceptance of additional transportation obligations was not invalid.[39] The court found that the state could impose conditions on reimbursement for local obligations which existed prior to the effective date of Proposition 2½. The court accepted the legislature's authority to use that power as a way to force the cities and towns to accept the 1983 legislation and the increased obligations that went with it.

The Supreme Court of Michigan heard a consolidation of two cases with rather intricate procedural backgrounds both dealing with the effect of the state's taxpayer revolt legislation on the state school finance formulae.[40] The taxpayer legislation involved is contained in an amendment to the Michigan Constitution known as the Headlee Amendment.[41] It states in pertinent part:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of local government by state law.[42]
>
> Units of local government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified. . . . If the assessed valuation of property as finally equalized . . . increases . . . the maximum authorized rate applied thereto in each unit local government shall be reduced to yield the same gross revenue from existing property . . . as could have been collected at the existing authorized rate on the prior assessed value.[43]

In the court's interpretation, these provisions, when enacted, were an effort to limit expansion of requirements placed on local government by the state, to freeze what they perceived was excessive government spending, and to lower their taxes both at the local and the state level.

The aforementioned affected school districts in Michigan that had increases in property values triggering the rollback provision in section 31 which necessitated a reduction in local tax effort. Under Michigan's form of state school finance, districts with lower levels of local effort

39. School Comm. v. Commissioner of Educ., 492 N.E.2d 736 (Mass. 1986).
40. Durant v. State Bd. of Educ., 381 N.W.2d 662 (Mich. 1985).
41. Mich. Const. art. 9 §§ 29-32.
42. Mich. Const. art. 9 § 29.
43. Mich. Const. art. 9 § 31.

received a lower percentage of their operating budget from state aid. In addition, those districts with high property values received a lower percentage of state aid, since the local effort required to generate the same amount of revenue is lower than districts with relatively low property values. Thus, since some districts were required to have smaller mill rates, they were receiving a lower percentage of their operating budget from state aid after the Headlee Amendment went into effect. The plaintiffs contended that this reduction in state aid was a violation of section 29 of the Headlee Amendment prohibiting reductions in "necessary costs of any existing activity or service required . . . by state law." Thus, they contended that the percentage of the district's budget given by the state had to remain at the level it was when the Headlee Amendment was enacted.

The court reconciled these two provisions of the Headlee Amendment by deciding that it did not apply to the constitutional provision for free education. It held that the term used in section 29 was "state law" and that this did not include service required under constitutional provisions such as the one for public education. Therefore, the reduction in the state funding level was upheld.

The Supreme Court of Idaho was faced with a petition for writ of mandamus or prohibition brought by the State Treasurer against the State Board of Land Commissioners challenging a statute[44] which provided that revenues obtained from grazing and recreational leases and timber sales on state lands could be used for expenses incurred in administering those lands.[45] The State Treasurer asserted that under the Idaho Constitution school lands and proceeds of the school lands could only be used for the maintenance of the state's schools. The court, however, found that the leases and proceeds from timber sales were not proceeds of the school lands and thus could be diverted to other purposes. The court turned to a provision in the Idaho Admission Bill which allowed for oil and gas leases on state lands "under such regulations as the legislature shall prescribe." The court thus interpreted the term proceeds in the constitution to constitute only proceeds from the sale of the lands, not income generated from leases of the land. Applying basic trust law principles, the court found that the use of the proceeds from the leases for the maintenance, management, and protection of the lands was in accord with the general rule that a trustee may deduct expenses from the res of the trust in order to preserve and protect the trust property.

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44. Idaho Code § 58-140.
45. Moon v. State Bd. of Land Comm'rs, 724 P.2d 125 (Idaho 1986).

Funds for Special Education

Cases reviewed in this section deal only with the fiscal or revenue aspects of funding for special education. Issues which involve the substantive portions of a child's program are dealt with in the chapter entitled "Handicapped." Cases in this section dealt with reviews of audits of private schools, a state agency's rule limiting reimbursement for out-of-state placements, the right of local agencies to carry over funds not expended, and the proper uses of state discretionary funds.

In a Pennsylvania case, the plaintiff, a private school providing special education services, appealed the decision of an audit conducted by the Department of Education which made adjustments to the payments made to the school.[46] Ashbourne challenged the decision alleging it was not made timely, enforced retroactive regulations, was inaccurate regarding the computation of school days, and included certain disallowances that were improper. The court first noted the limited scope of judicial review was whether the "decision was in accordance with law, the findings of fact were supported by substantial evidence, or constitutional rights were violated."[47] The adjustments to payments to be received in the 1981-82 fiscal year were made when it was determined through the audit that Ashbourne had been overpaid in the 1980-81 fiscal year. The court determined that the adjustment was timely since the audit of the 1980-81 fiscal year was completed in 1982 and the adjustment was made in 1982. The controlling regulations required that "any adjustments in payment required as a result of the audit will be made in the final payment to that school in that fiscal year."[48] The court upheld the department's construction of that regulation as being the fiscal year in which the audit was completed; to require otherwise would necessitate audits to be done in the years in which the expenses were incurred. That requirement would be impossible. Secondly, Ashbourne contended that the department erred by applying audit regulations which became effective on August 30, 1980 to expenses incurred in a fiscal year which began on July 1, 1980. The court found that even if expenses were incurred before the change in regulations became applicable, it was not improper. Agencies may adopt and enforce retroactive regulations as long as their application does not interfere with vested rights to compensation. Since the compensation here was not vested until reviewed, Ashbourne was not harmed. Third, the court found no evidence to support the plaintiff's contention that the number of days had either

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46. Ashbourne Educational Servs., Inc. v. Commonwealth of Pa. Dep't of Educ., 499 A.2d 698 (Pa. Commw. Ct. 1985).

47. *Id.* at 700.

48. 22 Pa. Code 171.19 (e)(1).

been miscalculated or that permission had been given to operate on a short school calendar. Finally, the court upheld the department's disallowance of certain specific expenses because they were not sufficiently documented; and upheld the expense of yearbook printing as unreasonable under a Pennsylvania statute which requires private schools to charge students for personal items. Clearly the court gave the department's determinations of fact and constructions of law great deference in dismissing the plaintiff's charges.

A court reached similar conclusions in New York.[49] Ferncliff was a private residential school for mentally retarded children operating in New York. In 1981, the New York State Education Department audited its financial records for 1978-79. The audit determined that the school's actual costs for 1978-79 exceeded those projected and that for 1979-80 its costs were less than projected. As a result, the department recommended to the Commissioner of Education that the reimbursement rate be adjusted for those two years, the net effect would be an overpayment to Ferncliff in the amount of $41,914, offsetting one year against the other. The Commissioner, however, chose not to offset and approved only the reduction in payment for the 1979-80 school year in the amount of $140,628. The court summarily found that the Commissioner was not required by the state to offset one year against the other and that failing to do so was not an abuse of discretion.

In 1984, the New Hampshire State Board of Education adopted a rule which set a limit on the state reimbursement rate for placement costs at out-of-state facilities. The practice was challenged as a violation of section 504 of the Rehabilitation Act of 1973.[50] The Office of Civil Rights conducted an investigation and in its opinion found no violation of section 504 or the implementing regulations.[51] It found that local education agencies (LEA) made placements based on students' individual educational needs. The state education agency's (SEA) rule only limited the amount of reimbursement local agencies would receive from the state; it did not limit the amount they could spend. The New Hampshire Department of Education's reimbursement for services to handicapped students never was 100%, the state legislation required only 80% reimbursement of cost to the district. This policy did not limit the LEA's expenses for an out-of-state placement, or even what it could claim for reimbursements, the policy only set limits on the level of state reimbursement.

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49. Ferncliff Manor for the Retarded, Inc. v. Ambach, 497 N.Y.S.2d 512 (App. Div. 1986).

50. 20 U.S.C. § 794.

51. New Hampshire Dep't of Educ. Complaint No. 01-86-1012, 258 E.H.L.R. 197 (O.C.R. 1986).

In response to a question concerning a state education agency requiring a remission of funds to the state, rather than allowing the local agency to carry funds over from one year to the next, the Office of Special Education found that the Education of the Handicapped Act (EHA)[52] provides only limited circumstances under which an SEA may recover funds from an LEA.[53] The dispute arose when an LEA in New Hampshire terminated the contract of a psychometrist in mid-contract. The local agency attempted to hire a replacement, but there were no applicants. Part of the work was contracted on a piecemeal basis to independently employed psychometrists. Some funds for the position remained unspent in the 1985 fiscal year. The LEA, however, anticipated spending that amount in fiscal year 1986 to complete the testing that remained uncompleted in the previous year by piecemeal contracts. The state special education director denied the request and demanded remission of the funds to the state special education discretionary fund. The Office of Special Education responded by the Tydings Amendment, which states:

> Any funds from appropriations to carry out any programs to which [GEPA] is applicable during any fiscal year which are not obligated and expanded by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.[54]

The response concluded that this provision permits agencies to hold funds from a particular fiscal year during a "carryover period" of one additional fiscal year.

Additional advice in terms of explaining when a state agency could seek remission of local funds and for what purposes was given. When an SEA does recover funds from an LEA they must be allocated to other LEAs or used by the SEA in providing special education and related services to handicapped children within that LEA. Section 624(d) of the EHA allows a state agency to take funds from a local agency and provide special education and related services directly to handicapped children residing in the area served by the local agency when the LEA: (1) is unable or unwilling to establish and maintain programs which meet the EHA requirements, (2) is unable or unwilling to be consolidated with other locals to establish and maintain such programs, or (3) has one or more handicapped children who can best be served by a regional or

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52. 20 U.S.C. § 1401 et seq.
53. Holt, 211 E.H.L.R. 390 (E.H.A. 1986).
54. *Id.* at 391.

state center. Demanding remission for any other reason or use would be in contravention of section 611(d) of the EHA which requires state agencies to allocate funds to local agencies based on the number of handicapped children in that local agency receiving special education and related services.

The Office of Special Education answered another inquiry regarding the SGA's proper use of federal funds.[55] Section 611(2) of the EHA allows a state agency to use 5% of the federal funds received for administrative costs, the remainder to be used for direct and support services to handicapped children under the EHA. Part of the defined support services includes a "Comprehensive System of Personnel Development" which may include a variety of training activities. The question arose whether the salaries for the staff of these training projects should be allocated under support services or must be taken out of the 5% allowed for administrative costs. The Office of Special Education's response indicated that it is appropriate to allocate staff salaries, in whole or in part, to support services rather than to administration.

A second inquiry dealing with special education funding was whether an SEA may pay reasonable and necessary expenses of its State Advisory Panel. The Office of Special Education responded by indicating that under 34 CFR 300.653(f) it is appropriate for a state agency to reimburse members of the state panel, but only with that 5% of its EHA federal funds available for administrative costs, not with that portion of the funds designated for direct and support services.

Federal Funds for Education

In *Bell v. New Jersey and Pennsylvania*,[56] the United States Supreme Court held that the federal government may recover misused funds from the states. In the wake of that opinion, there have been a number of cases involving the Secretary of Education's decisions seeking repayment (e.g., *Bennett v. Kentucky Department of Education*,[57] *Bennett v. New Jersey*[58]). Three such cases appeared again this year. In addition, a court reviewed the United States Department of Education's construction of the impact aid statute, and federal funds were mandated by a court to fund one of Chicago's desegregation programs.

The Fourth Circuit Court of Appeals reviewed the Secretary of Education's order for the refund of funds allegedly misspent under title I

55. McNulty, 211 E.H.L.R. 394 (E.H.A. 1986).
56. 102 S. Ct. 2187 (1983); *see* The Yearbook of School Law 1984 at 225.
57. 105 S. Ct. 1544 (1985); *see* The Yearbook of School Law 1986 at 211.
58. 105 S. Ct. 1555 (1985); *see* The Yearbook of School Law 1986 at 211.

(chapter 1) during 1977-79 totalling $317,435.[59] The amount included funds spent on a secondary summer school program, a Saturday program, and funds for a Home School Worker. The Secretary concluded that the programs funded constituted general aid to the schools because they were not targeted to the special educational needs of title I eligible students and therefore were not appropriate expenditures under title I. The Home School Program was designed to reduce absenteeism in the schools which contained title I children. The employee, after receiving the absentee list for the day, would contact the title I families on the list, by phone or a visit, inquiring about the absence, after which the same procedure was followed for the non-title I children. It was found that equivalent services were provided to both groups of children. The summer school program was for the provision of remedial reading, math, and basic skills instruction to title I children. However, it included summer theater and music programs which were open to all students. It was found that the primary purpose of this was not to provide remedial instruction to title I students, but to provide continuing music education in the summer. Finally, the Saturday program was not limited to title I children and offered extracurricular activities such as photography, drill team, needlepoint, reading for pleasure, and other leisure classes. The school's attempt at defending this program under the auspices of confidence and self-esteem building and developing a rapport with students was not adopted by the Secretary, and it was determined that these were beyond the scope of the stated title I purposes. The court implemented the limited level of review set in *Bennett v. Kentucky Department of Education* (i.e., whether the findings are supported by substantial evidence).[60] The court found substantial evidence to support the Secretary's findings that the expenditures were a misuse of funds as constituting general aid to the school rather than aid aimed specifically at the identified needs of the target children.

The Eleventh Circuit Court of Appeals upheld the Secretary of Education's determination that it must refund $483,517.01 for misuse of title I funds.[61] The United States Department of Education had determined that the state had not provided "comparable" services to nontitle I schools. This requirement was intended to insure that federal funds were used to provide compensatory programs over and above those normally provided in the schools. The state conceded that the comparability requirement had not been met, but that its slight variance from the requirement (the statute allows for a 5% variance in spending) should not

59. Virginia Dep't of Educ. v. Secretary of Educ., 806 F.2d 78 (4th Cir. 1986).
60. *Id.* at 79.
61. Florida Dep't of Educ. v. Bennett, 769 F.2d 1501 (11th Cir. 1985).

necessitate a full refund of the federal funds for all of the schools involved. The Secretary of Education disagreed with the school and the court upheld that decision, reasoning that it was beyond the scope of review for the court to substitute its view of a more equitable remedy for the decision of the Secretary.

The Ninth Circuit Court of Appeals held in a similar manner and required the state of Hawaii to refund $2,109,618.[62] In addition to the comparability of services question raised in the Eleventh Circuit case, the state attacked the statute's no-supplant requirement as unreasonable.[63] The court again deferred to the Secretary of Education's interpretation of the statutory requirements and upheld its decision.

In a federal district court case the court reviewed a finding made by the United States Department of Education and its construction of a statute.[64] This case involved the Bayonne School Board's application for impact aid under the Impact Aid statute. That statute provides that a local district can receive impact aid if the United States owns 10% or more (assessed value) of the real property in a school district.[65]

The Secretary of Education denied the district's request for impact aid. The school district appealed the decision arguing that it misconstrued the statute by dividing the assessed value of federal property by the assessed value of all property in the district, including the federal property, to determine if the district met the 10% criterion. The court approached the issue as one of statutory construction. Thus, if the statute is ambiguous the only issue for the court is whether the agency's construction of the statute is reasonable. The court found ambiguity in the statute since the "statute is silent as to whether the agency should or should not include the value of federal property in the value of all property in the district."[66] Even though the legislative history was found to contain passages supporting both interpretations, the court found the Secretary's interpretation of the statute reasonable since, according to general rules for reviewing an agency's construction of a statute, the court will uphold an agency's interpretation if it finds it possible within the intent of the statute even if the court would have reached a different decision in a de novo review.[67]

A federal district court in Illinois was much more willing to review

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62. Department of Educ., State of Hawaii v. Bell, 770 F.2d 1409 (9th Cir. 1985).

63. 20 U.S.C. § 241 e (a)(3)(B).

64. Bayonne School Bd. v. United States Dep't of Educ., 640 F. Supp. 470 (D.D.C. 1986).

65. 20 U.S.C. § 237(a)(1)(C).

66. Bayonne School Bd. v. United States Dep't of Educ., 640 F. Supp. at 472.

67. *See* Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

the administrative decision made by the United States Department of Education.[68] There the Board of Education of Chicago sought an order compelling the Department of Education to provide interim funding for three programs under its desegregation plan. The Secretary had denied funding from discretionary fund money to support the Chicago Effective Schools Project (CESP). The statutory and regulatory authorization for the funds requires that the money be spent on a model program of national significance that materially furthers the overall success of the desegregation plan, is reasonable in costs, and is consistent with the statutory criteria. The statute authorizes the Secretary to fund a local educational agency to carry out programs and projects which, among other things, carry out research and demonstrations related to the purposes of the law, are designed to improve the training of teachers needed to carry out the purposes, and are designed to assist in the implementation of desegregation programs.[69] Under the CESP the money was to be used to pay salaries of assistant principals, which would free up principals' schedules so they could devote their time to the CESP, and to pay for field trips which were to serve as cultural enrichment. The court held that the board was entitled to the release of the discretionary fund monies because it was not contrary to the statute to grant the authorization of funds, and because the project appeared consistent with the express statutory criteria to support the desegregation plan. The court agreed with the denial of funds for a language instruction program which would have provided student tutors for students with low incidence native languages as prohibited by the statute which requires the use of the "most qualified available personnel."[70] Finally, the court ordered the release of funds for a different bilingual program in which the court disagreed with the interpretation the United States had placed on another portion of that statute related to teaching Spanish literacy and heritage to English speaking students. The court found that this was not the primary purpose of the program, but did to a limited extent have that effect because the program included an attempt at maintaining the integrity of the classroom; thus some English speaking students were present during the instruction in question. The court found this was not contrary to the statute,[71] as long as the English speaking children did not exceed 40% of the group.

The interesting part of this case is not so much the actual substance of the ruling, because one must assume that the case is specific to the

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68. United States v. Board of Educ., 642 F. Supp. 206 (N.D. Ill. 1986).
69. 20 U.S.C. § 3851(a).
70. 20 U.S.C.A. 3231(3)(c)(i).
71. 20 U.S.C.A. 3223(a)(4)(B).

facts of the Chicago programs and desegregation plan, but the level of review apparently implemented by the court. In the previous cases, the courts were quite specific in terms of the deference that should be given to the administrative agency in interpreting statutes and implementing regulations. Here, however, the court did not discuss whether the United States' interpretation of the statutes was reasonable and apparently substituted its interpretation and determination of fact for those of the administrative agency.

School Fees

Cases in this section deal with challenges to a school district's exacting fees. In one case, a federal district court reviewed tuition rates for certain alien students under an equal protection clause challenge. In a case in a bankruptcy court, the court determined that a school district could not withhold a student's transcript for failure to pay tuition. In another case, the validity of allowing a receiving school district to set a tuition rate was questioned.

A federal district court in Georgia reviewed the Atlanta School Board's policy of charging tuition for certain alien students under an equal protection challenge.[72] In 1980, the district adopted a policy charging tuition for holders of certain types of visas (B, F-1, F-2, H, I, J, and L), not charging tuition for others (A and G which both relate to certain international organizations), and ignoring other categories of aliens (C, D, E, K, M, and illegal aliens). The plaintiffs are aliens holding F-1 visas and their minor children holding F-2 visas. The family resided within the Atlanta School System and the children attended Atlanta schools from 1978 to 1982. The court found that the policy violated the equal protection clause. First, it found that under the policy "identically situated persons would be treated differently based on alienage."[73] Specifically the court noted the district admitted that

> a person who came from Birmingham, Alabama, to attend Georgia Tech for four years to earn an advanced degree could demonstrate "residency" within the city and send his children to school tuition-free. Mr. Pena, a Venezuelan citizen, could come to the city to attend Georgia Tech for four years to get an advanced degree, and could not, under any circumstances, demonstrate "residency" within the city so that his children could attend school tuition-free.[74]

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72. Pena v. Board of Educ., 620 F. Supp. 293 (D. Ga. 1985).
73. *Id.* at 299.
74. *Id.* at 299-300.

Distinctions based on alienage trigger strict scrutiny under equal protection analysis. Thus the court next had to determine if the policy could be justified as necessary to a compelling state interest. The district offered several justifications for the policy: to make Atlanta's policy conform to others in the state, to defray added expense involved in educating alien children, and to discourage Iranian students from entering the United States and taking advantage of tuition free high school to learn English before they entered an American university. The court found none of these interests compelling. It, in fact, used the last reason as conclusive evidence of intentional invidious discrimination, and found the second reason invalid after the Supreme Court ruling in *Plyler v. Doe*.[75] In *Plyler*, the court invalidated a Texas law which denied a free education to illegal aliens. In addition, the court found that since these policies did not apply to all nonresidents, or to all types of resident aliens, they were not narrowly tailored to serve the proffered interest. Thus, the court found that the policy was a violation of the plaintiff's equal protection rights. It is interesting to note that the policy was rescinded in 1982 but the school district refused to refund one year's tuition paid by the plaintiff. In the case, the court granted a summary judgment on the issues of liability of the district, the school board, and the individuals on the board for a section 1983 action, and the issue of damages was left for trial.

A bankruptcy case from Ohio[76] involved the issue of a school's withholding a transcript for failure to pay tuition. The Dembeks enrolled their son in Brookside in the Sheffield Public School District for the school years 1983-84, 1984-85. Because they were residents of the Lorrain School District, they were required to pay nonresident tuition expenses to the Sheffield District. They paid the full tuition for the first year, but only a portion of it the second year. The Dembek's moved, and enrolled their son in their resident district, Oberlin, for the 1985-86 school year. At the end of that year, they received a letter from the Oberlin School District informing them that their son had not been promoted to senior status, and that his graduation was in jeopardy because Brookside had refused to release his transcripts until the delinquent tuition fees were paid. Sometime after the Dembek student had been enrolled in Oberlin, his parents filed a petition of bankruptcy and included in their listing of debts the Sheffield tuition. The Dembeks filed a petition for an order compelling the board of education to turn over a copy of the school transcript. The court held that the attempt to collect the debt by withholding the transcript was prohibited by the bankruptcy debtor protec-

75. 457 U.S. 202 (1982).
76. Dembek, 64 B.R. 745 (Bankr. N.D. Ohio 1986).

tion provision of the Bankruptcy Code.[77] In addition, the court held that the school district could not justify withholding the transcript as an attempt to collect a debt owed by the son, since the state statutes clearly indicated that the tuition was the financial obligation of the parents and not the child.[78] Nor could they justify the debt being that of the son by an implied contract with the son, since there was no mutuality of assent necessary for a valid contract. The issue of the substantive due process guarantees that would prohibit a penalty for actions of another was not addressed by the court.

In a Nebraska Supreme Court case,[79] a taxpayer sought an injunction against a statute involving the determination of the rate for nonresident tuition. The taxpayer alleged that the statute was an unconstitutional delegation of authority because the receiving school district was allowed to set the tuition rate. The statute in question had been repealed and replaced by a system under which the State Department of Education determined the nonresident high school tuition rate.[80] Thus, there was no longer any argument on which to base the injunction. However, the court remanded the case for a determination of the constitutionality of the prior statute on the setting of nonresident tuition. Even though the statute had been repealed, the Nebraska Supreme Court found that this did not render the action moot because, if the statute were found unconstitutional, it would entitle individual taxpayers to refunds of taxes paid.

SCHOOL TAX ISSUES

Power to Tax

These cases all essentially deal with a school district's authority to raise funds. In one case, taxpayers challenged a school district's authority to impose two different tax rates within one recently merged school district. Another case dealt with taxpayers' allegations that the school district did not have the authority to impose additional taxes because it had a surplus of funds. One case principally involved the method taxpayers must use to obtain a refund after they had successfully challenged the constitutionality of the tax. The next case involved a court's review of the determination of tax liability on a developer. The final case in this section dealt with the enforcement of an agreement between a school

77. § 362(a)(6).
78. Ohio Rev. Code Ann. § 3327.06.
79. Mullendore v. School Dist. No. 1, 388 N.W.2d 93 (Neb. 1986).
80. Neb. Rev. Stat. § 79-494.

district and a real estate developer whereby the developer was to pay school impact fees.

In 1971, the Swarthmore-Rutledge Union School District and the Wallingford School District merged. Before the merger, Swarthmore was a sponsor of the local community college and was liable for a proportionate share of its capital and operating expenses. Beginning with the first budget of the new merged district, and every budget thereafter, the merged district levied and collected a property tax on all real estate solely in the Swarthmore area to support the community college. Taxpayers complained that the merged school district had no authority to impose the separate property tax. The taxpayers sought an injunction from the district's levying and collecting such taxes. The court summarily held that the district had the statutory authority to impose the additional tax in only a portion of the new district.[81]

In a Pennsylvania case, the school district filed an action against delinquent taxpayers to collect past taxes.[82] The taxpayers defended alleging that the school district did not have the authority to levy taxes because it had a surplus of funds. In Pennsylvania, a school district is authorized to levy, assess, and collect taxes for general revenue purposes. The court found that the only limits on that power were those related to rates and to the maximum aggregate amount to be levied. The court held that these limitations provided the exclusive method of determining whether a tax was "excessive or unreasonable." The mere existence of surplus funds did not support the claim that the assessed taxes were excessive or unreasonable. Thus, the school district's authority was upheld.

In a case from Kentucky, taxpayers who had successfully challenged the constitutionality of school tax assessments on agricultural land were seeking a refund of taxes paid under the statute from the school district.[83] The school was seeking an injunction to restrain the sheriff from granting the refund. The issue principally involved the method successful taxpayers must use to obtain a refund. The Kentucky Supreme Court held that the taxpayers who had been successful in their original statutory challenge were not automatically entitled to a refund.[84] It found that where a statute provides for a procedure to seek refunds, a refund can only be given pursuant to that procedure.[85] Kentucky has a statute which sets forth procedures for tax refunds.[86] Thus, the taxpayers had to

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81. Hummer v. Board of School Directors, 515 A.2d 359 (Pa. Commw. Ct. 1986).
82. Thompson v. West Branch Area School Dist., 505 A.2d 386 (Pa. Commw. Ct. 1986).
83. Board of Educ. v. Taulbee, 706 S.W.2d 827 (Ky. 1986).
84. Dolan v. Land, 667 S.W.2d 684 (Ky. 1984).
85. Board of Educ. v. Taulbee, 706 S.W.2d at 828.
86. Ky. Rev. Stat. § 134.590(6).

institute a supplemental action pursuant to the statutory procedure to obtain a refund of taxes which they paid, but which were later found to be unconstitutional.

In a Mississippi case, De Soto county brought an action against W.H. Hopper, a real estate development corporation, to compel it to pay school building taxes.[87] The corporation had originally posted bond for the amount of the tax in 1974. After this, it filed suit challenging the constitutionality of the enforcement of the tax against it. Hopper lost that action and the appeal in 1980. In 1981, Hopper then filed this action alleging that it did not owe the tax. The Supreme Court of Mississippi held that Hopper should be estopped from challenging the tax liability since it would not have had standing to pursue the previous action had it not been subject to the tax under the statute. In addition, the court found that the taxing authority has the burden of proof. The county, nonetheless, in this action sustained that burden through documents and corroborating testimony.

In California, after the adoption of Proposition 13, ad valorem property taxes in excess of 1% were prohibited. Since most localities had already reached that limit at the time of passage, school districts in essence were prohibited from increasing property taxes. In response to this constraint and the need to meet the growing demands of increasing school enrollments, local school districts began imposing school impact fees. These are generally fees imposed on real estate developers to cover the costs of constructing and maintaining school facilities attributable to their developments. In 1977, Candid Enterprises entered into an agreement with the Grossmount Union High School District to pay fees. In 1978, the School Facilities Act[88] went into effect which authorized cities and counties to require developers to pay fees for temporary school facilities. In 1980, the school district discontinued the practice of entering into agreements for school impact fees with developers, because it determined that sufficient funds had been acquired to handle the projected enrollments. The developer sought building permits in 1980 and in 1981 paid under protest the amount of fees specified in the 1978 agreement. The developer sought a refund of those fees under the contention that the School Facilities Act preempts the school district's authority to enter into impact fee agreements. The Supreme Court of California[89] analyzed the issue of preemption of local authority by state action under the following test:

In determining whether the Legislature has preempted by

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87. W.H. Hopper and Assocs. Inc. v. De Soto County, 475 So. 2d 1149 (Miss. 1985).

88. Cal. Gov't Code § 65970 *et seq.*

89. Candid Enters., Inc. v. Grossmont Union High School Dist., 705 P.2d 876 (Cal. Ct. App. 1985).

> implication to the exclusion of local regulation we must look to the whole purpose and scope of the legislative scheme. There are three tests: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.[90]

The court, in conclusion, disagreed with an attorney general's opinion on the issue and found that the state had not preempted local authority. The statute by its terms allowed for alternative school facilities financing arrangements with builders of residential developments. Thus, the court enforced the 1978 agreement for payment of school impact fees entered into by the district and the developer.

Bond Issuance

Cases in this section deal with the process of raising revenues through bonds. The first two cases reported dealt with the standard of review the court has over a school board's adoption of a bond issue.

Voters filed a suit to contest a bond election alleging that the ballots used in the election failed to conform to statutory requirements.[91] First, it was claimed that the back of the ballots did not adequately state the name of the public measures to be voted on, since the propositions merely set forth the measures by number instead of name which was contrary to statute.[92] The substance of the measures were, however, contained on the front of the ballots. The court found that no harm had been done, and thus there had been substantial compliance with the statute. Second, the election was challenged because the texture of the paper ballots was such that one could see how a person voted through the paper, which was contrary to statute.[93] The court found that no voters had been disenfranchised because of the defect, nor had it affected any voter's decision or the results of the election. In sum, the court found that the ballots substantially complied with the statute governing

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90. *Id.* at 882.
91. Behrman v. Whiteside School Dist. No. 115, 492 N.E.2d 1021 (Ill. App. Ct. 1986).
92. Ill. Rev. Stat. 1985 ch. 46, § 16-7.
93. Ill. Rev. Stat. 1985 ch. 46, § 16-3.

submission of a public question to the electorate. Therefore, the election results were upheld.

A Texas case presented the issue of another school election appeal.[94] Taxpayers contested a school bond election, and the school district filed a separate law suit seeking a declaratory judgment that the bond proceedings were valid. The two cases were consolidated. The case, however, was dismissed before a trial on the merits because the taxpayers failed to post bond with the court after being ordered to do so. The dismissal was upheld by the appellate court.

In Pennsylvania, the state constitution authorizes the legislature to set debt limits for all units of local government.[95] The state Debt Act sets the debt ceiling and provides for the means for incurring, evidencing, securing, and collecting this debt.[96] In 1982, the Pleasant Valley School District approved a building project for a school within the district. After receiving approval for the project from the State Department of Education in 1984, the board authorized a series of general obligation bonds and filed for approval with the Department of Community Affairs pursuant to the Debt Act. Shortly thereafter, taxpayers filed a complaint with the Department of Community Affairs challenging the proceedings which led to the authorization of the bond issuance. The complaint was dismissed by the Department and the taxpayers appealed to the court.[97] Basically the court dealt with the case by determining the standard of review that the department has over the board's adoption of the bond issuance under the Debt Act. The court found that in review the issues should be "very narrowly prescribed, restricting inquiry into procedural and substantive matters of the local government unit, *taken pursuant to this act*, involving only: (1) the *regularity* of the proceedings, (2) the *validity* of the bonds, and (3) the *legality* of the purpose for which such obligations are to be issued."[98] The court's review of the department's finding were limited "to whether constitutional rights were violated, an error of law was committed, or whether findings of fact were supported by substantial evidence."[99] The court upheld the department's determination that the wisdom of the project was not subject to review as was contended by the taxpayers. The taxpayers did raise procedural issues under the statute which were subject to proper review by the department—those which involved the

94. Burns v. Delmar-West Lamar Consol. School Dist., 720 S.W.2d 836 (Tex. Civ. App. 1986).

95. Pa. Const. art 9 § 10.

96. 53 Pa. Const. Stat. § 6780-1 *et seq.*

97. Property Owners v. Pleasant Valley School Dist., 515 A.2d 85, 99 (Pa. Commw. Ct. 1986).

98. *Id.* at 88.

99. *Id.*

proper advertisement of the proposed resolution. However, the court found that there was evidence to support the department's findings that the issues were without merit. Therefore, the department's findings were upheld.

Relationship of School District to Other Government Units

Cases reported in this section involve disputes between a school district and another governmental entity; the issues presented are varied. In the first case reported, the city and the city school district brought an action to compel the county to pay them a proportional share of the proceeds of school improvement bonds issued by the county. The issue presented in the next case was whether a municipality was obligated to indemnify a school district for a loss in school tax revenues resulting from the town's adoption of a tax found to be unconstitutional. In the next case, the school district brought action against the county clerk, county board, and surety on county clerk's penal bond for damages caused by the clerk's failure to extend the correct tax rate in tax bills sent to taxpayers. At issue in another case was whether the school district had the authority to collect summer taxes or whether that was the exclusive authority of the township. Another case involves a school district changing the duties of the tax collector after it adopted a lockbox tax collection system, and the final case deals with the school district's liability for impact fees to an environmental control district.

In a case from Tennessee, the city of Newport and the city school district brought an action to compel Cocke county to pay them a proportional share of the proceeds of school improvement bonds issued by the county.[100] The basis of the claim was a state statute which provided that counties in which cities operate an independent school district must pay those cities a share of the sale of bonds for schools, based on the proportion of average daily attendance.[101] However, "a city . . . which operates no high schools is not entitled to the pro rata distribution of the proceeds of bonds issued by a county for high school purposes."[102] In this case, the city of Newport operated an elementary district, kindergarten through twelfth grade system, considering seventh through twelfth grade to be high school. The county issued bonds to add classrooms and improve the gymnasium at Cosby School, a school containing grades kindergarten through twelve. The gymnasium was used on occasion by the elementary grades for recess during inclement weather. The seventh and eighth grade pupils attended regularly sched-

100. City of Newport v. Cocke County, 703 S.W.2d 626 (Tenn. Ct. App. 1985).
101. Tex. Code Ann. § 49-3-1003(b)(i).
102. City of Newport v. Cocke County, 703 S.W.2d at 627.

uled physical education classes in the gymnasium. The classroom space was used exclusively by grades nine through twelve. The city contended that since there was incidental use of these facilities by the elementary grades, the bonds were issued for overall school purposes, and thus they should be entitled to their pro rata share. The court deferred to the county's stated purpose in the issuance of the bonds as "high school bonds" and found that the limited use of the facility by other students did not change the essential character of the facility as a high school gymnasium.

The issue presented in a New York case was whether a municipality, the town of Webster, was obligated to indemnify another state entity, Webster Central School District, for a loss in school tax revenues resulting from the town's adoption of a tax found to be unconstitutional.[103] In the original action, a taxpayer had brought suit against the school district and town to enjoin attempts to collect school taxes in excess of the amount that would be payable if the prior uniform rate of taxation were applicable rather than the town's recently adopted homestead dual tax rate system.[104] As a result of the court's ruling in the taxpayer's favor, the school district was required to reduce the 1985-86 tax levy imposed on Xerox by approximately $892,000. Following judgment in favor of the taxpayer, the school district sought indemnification against the town to recover for lost revenues. The court found that "the enactment of legislation cannot serve as a basis for imposing civil liability, even where such legislation is subsequently held to be unconstitutional."[105] In addition, the town was acting on the basis of a state statute which is presumptively valid. Thus, the New York Supreme Court, Monroe County held that the school district was not entitled to indemnification against the town even though the town's imposition of dual tax rates was found to be unconstitutional.

In 1983, the voters in the Beach Park Community Consolidated School District passed a referendum to increase the maximum tax rate for the educational fund by $.50 per $100 on equalized assessed valuation. After this, the school board adopted its budget and filed its levy for 1983 taxes to be collected in 1984 with the county clerk. The county clerk instead of determining the tax due based on the new tax rate, used the old lower tax rate. Despite the school district's informing the county clerk of the error, the tax bills went to the collector and then to the taxpayers based on the incorrect tax rate. The board of education

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103. Xerox Corp. v. Town of Webster, 502 N.Y.S.2d 379 (App. Div. 1986).

104. Foss v. City of Rochester, 480 N.E.2d 717 (N.Y. 1985); Foss v. City of Rochester, 489 N.E.2d 727 (N.Y. 1985).

105. Xerox Corp. v. Town of Webster, 502 N.Y.S.2d at 381.

brought suit against the county clerk, county board, and surety on the county clerk's penal bond for failing to extend the correct tax rate. There was in effect an Illinois statute which allowed additional tax to be included on the tax bill for the next year if a tax was prevented from being collected by reason of error.[106] The court found this statute to be the exclusive remedy the school had to pursue, thus it could not recover on the county clerk's penal bond.[107]

A school district brought an action against a township supervisor and a township trustee seeking mandamus to compel the township supervisor to deliver a certified copy of the assessment rule. What really was at issue was whether the township was the exclusive entity to collect summer property taxes. The court held that it was not, but that the school district also had that authority.[108]

In 1977, Penn-Delco School District adopted a new system of tax collection which involved the use of lockboxes. Recognizing the cost savings and reduced work load realized by the system, the school board adopted a resolution in 1981 which transferred most of the tax collectors' duties to district employees and reduced the tax collectors' salary to $1. The tax collectors sought an injunction against the use of the system and the restoration of their jobs. The court held that since the duties were statutorily prescribed the school district lacked authority to transfer those duties to others. Thus, the court enjoined the use of the lockbox tax collection system and reinstated the previous salary.[109]

A Florida case involved the Palm Beach County School Board's action for declaratory judgment and injunctive relief against an environmental control district.[110] The school board was claiming that the school was exempt from certain fees the environmental district was attempting to assess. In 1981, the school district was in the process of building a middle school. The sewer system, under the control of the environmental control district, did not yet reach this property, but the school district wanted to be included in the service at such time as the sewer system was constructed. In negotiating this, the environmental district assessed the school district for service availability standby charges and line charges, which would basically buy the right to make actual physical connection to the sewer system when the system reached the middle school property. The school district refused to pay the sum claiming

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106. Ill. Rev. Stat. ch. 120, par. 703 (1983).

107. Board of Educ. v. Hess, 488 N.W.2d 1358 (Ill. App. Ct. 1986).

108. Lenawee Intermediate School Dist. v. Raisin Township Supervisor, 388 N.W.2d 306 (Mich. Ct. App. 1986).

109. Penn-Delco School Dist. v. Schukraft, 506 A.2d 956 (Pa. Commw. Ct. 1986).

110. Loxahatchee River Environmental Control Dist. v. School Bd., 496 So. 2d 930 (Fla. Dist. Ct. App. 1986).

it was exempt from impact and service availability fees under Florida statutes.[111] The court found that under the definition given, the fees were impact fees from which the district should be exempted. In addition, the environmental district claimed the exemption statute was unconstitutional on several grounds, the most notable being an alleged violation of equal protection. To this allegation the court found no violation. The state legislation did have a rational basis; the classification system used bore some rational relationship to a legitimate state purpose. The court found that it was within the legislature's authority to attempt to limit the costs of school construction by exempting these facilities from impact fees imposed by other public agencies.

Use of Revenue

These cases deal with limits on school districts' substantive spending power. The first case involved the question of properly spending funds in a proposed budget election. The other case reported dealt with a school ditrict's authority to maintain a budgeted line item reserve fund for unexpected contingencies in addition to a statutorily authorized reserve fund.

The Court of Appeals of New York reversed a state court ruling on the issue of expenditures for voter election information.[112] The court found that the board of education was authorized to present a proposed budget to the voters accompanied by educational and informational material. However, in this instance the information contained subjective comments urging the voters to support the board's position in the election. This exceeded the authority granted to them in the statute.[113]

The Utah Supreme Court reviewed the Salt Lake City School District's authority to maintain a budgeted line item reserve fund for unexpected contingencies in addition to a statutorily authorized reserve fund for unexpected contingencies.[114] The Utah Legislature in 1971 authorized districts to allocate up to 5% of their maintenance and operating budgets to an undistributed reserve.[115] The Salt Lake City School District created an additional line item reserve to be used to cover increased electricity and fuel costs, school outings, student body activities, school supplies, retirement, insurance, garbage collection, professional meetings, grounds maintenance, and legal services. The Supreme Court of

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111. Fla. Stat. Ann. 235.26(1) (1981).
112. Phillips v. Maurer, 490 N.E.2d 543 (N.Y. 1986), rev. The Yearbook of School Law 1986 at 225.
113. N.Y. Educ. Law §§ 1716, 1709 (33).
114. Olson v. Salt Lake City School Dist., 724 P.2d 960 (Utah 1986).
115. Utah Code Ann. § 53-20-2 (1953) (Repealed 1981).

Utah found that the legislative intent of the statute was to restore sound practices to school district budgeting by requiring districts to carefully estimate their needs and ensure that the budget is an accurate reflection of expenses. It found that since an upper limit had been set by the legislature, it intended the statutorily prescribed reserve fund to be exclusive. Therefore, it held that the school district had exceeded its statutory authority with the practice.

Tax Exemptions

These cases deal with taxpayer efforts to draw themselves under the provisions of statutorily prescribed tax exemptions. One case dealt with a religious use exemption; one dealt with a public charity exemption; and one involved a school district that attempted to qualify for an exemption.

A religious organization brought an action against the school district claiming that a tract of land it held was exempt from taxation under a religious use provision.[116] The exemption, in pertinent part, reads: "the Legislature may . . . exempt from taxation . . . actual places of religious worship."[117] The organization's religious beliefs were patterned after the early Jewish tenants, in which the land was thought to be sacred and used for the purposes of the health and education of the people. They were claiming an exemption for the full seventy-seven and one-half acres which they owned. Members of the organization lived, raised crops, and grazed their animals on the land. Religious worship was held in the individual homes and in a common synogogue building on the property. An exemption was granted for two of the acres. The court of appeals held that the additional property was not exempt from taxation under the religious use provision. The court reasoned that even though the land may be used for religious purposes, it was not used "primarily as a place of regular religious worship" as is required for the exemption.

The issue decided in a Pennsylvania case dealt with a public charity exemption.[118] There the taxpayer was a nonprofit organization which was constructing a housing complex for elderly and handicapped persons. The school district was attempting to collect a residential construction tax on the property. The taxpayer claimed an exemption as a "public charity." The court found that the taxpayer was not a "purely public charity" entitled to an exemption. In order to qualify as a public

116. General Ass'n Branch Davidson Seventh Day Adventists v. McLennan, 715 S.W.2d 391 (Tex. Civ. App. 1986).

117. Tex. Const. VIII, section 2.

118. Council Rock School Dist. v. G.D.L. Plaza Corp., 496 A.2d 1298 (Pa. Commw. Ct. 1985).

charity the organization must: (1) advance a charitable purpose; (2) donate or render gratuitously a substantial portion of its services; (3) benefit a substantial and indefinite class of persons who are legitimate subjects of charity; (4) operate entirely free from private profit motive; and (5) relieve the government of some of its burden.[119] *a* The court found that the taxpayer was not entitled to the exemption. Even though the housing project for elderly and handicapped residents possessed some charitable characteristics it did not possess them all. The court found that this housing project did not relieve the government of some of its burden, since essential services were not provided to the residents of the housing project.

A school district itself was seeking a tax exemption in the final case. The Court of Appeals of New York held that school districts which independently determined their budgets and the sums to be raised by taxes and submitted those amounts to county officials who then levied the taxes, did not themselves levy the taxes and thus could not opt out of the exemption for 50% of the increase in assessed value due to commercial, business, or industrial construction.[120]

119. *Id.* at 1301.
120. Walker v. Board of Assessors, 487 N.E.2d 276 (N.Y. 1985).